

APPEAL UNDER ARBITRATION ACT NO.12/96

1. Union of India,
through the Joint
Secretary, Ministry of
Defence, New Delhi,
2. Garrison Engineers and
Accepting Officer,
Vasco da Gama, Goa, and
3. Chief Engineer,
Cochin Zone,
Cochin-4.

... Appellants.

Versus

Shri Fateh Bahadur Singh,
major, Proprietor of M/s.
A. & A. K. Constructions,
Flat No.6, Pai Building,
Behind Uma Petrol Pump,
Vaddem, Vasco da Gama,
Goa 403 802.

... Respondent.

Shri V. P. Thali, Senior Central Government Standing
Counsel for the appellants.

Shri S. G. Bhobe, advocate for the respondent.

CORAM : SMT. NISHITA MHATRE, J.

Date of Reserving
the Judgment : 23rd January, 2004.

Date of Pronouncing
the Judgment : 20th February, 2004.

JUDGMENT

This Appeal has been filed under Section 39 of Arbitration Act, 1940. The Order impugned dated 21st June, 1996, is passed by the Civil Judge, Senior Division at Vasco da Gama in Special Civil Suit No.39/91, whereby directions have been issued to file the Arbitration Agreement in Court. The disputes and differences which arose between the plaintiff and the defendants have been referred by the

impugned order to the Sole Arbitration of an Engineer, Officer to be appointed by the defendant no.3.

2. The facts giving rise to the present appeal are as follows:

A work order was issued to the respondent (original plaintiff) to carry out certain works for the appellants. On 12th January, 1989, a final bill and no claim certificate was signed by the respondent stipulating thereby that he had no other demands on the appellants. On 9th May, 1989, the appellants received a letter from the respondent requesting them to settle certain disputes. Subsequently, on 16th June, 1989, a request was made by the respondent for appointment of an Arbitrator to decide the disputes and differences between the parties. This request was denied by the appellants on 26th June, 1989. Thereafter, the respondent engaged in correspondence with the appellants and ultimately, on 31st January, 1991, raised a claim on the appellants. Since the appellants did not accede to the demand of the respondent to appoint an Arbitrator, the respondent filed an application on 26th March, 1991 under Section 20 of the Arbitration Act, 1940, (hereinafter referred to as "the Act") for appointment of an Arbitrator. By their written statement, the appellants urged that there was no arbitral dispute as there was no contract subsisting nor were there any claims remaining to be paid to the respondent pursuant to the work carried out by

him. The issues were framed by the trial Court. These issues are as follows:-

1. Whether the plaintiff proves that the defendants are required to file original agreement in Court?
2. Whether the plaintiff proves that the disputes and differences are there which require to be referred for arbitration?
3. Whether the defendants prove that they are bound by Clause 70 of the Agreement? (It appears that there is some typing mistake and this issue should be read as to whether the defendants prove that they are not bound by the Clause 70 of the Agreement?)
4. What relief? What order?

The trial Court then directed that the dispute be referred for arbitration to an officer to be appointed by the appellants.

3. Shri Thali, for the appellants, submits that the respondent had issued a no claim certificate way back on 12th January, 1989. At that point of time, there was not even a whisper from the respondent that the no claim certificate was being signed by him under coercion or under undue influence, etc. He submits that for the first time in the application filed before the trial Court under Section 20 of the Act, the respondent raised a plea of coercion on the part of the appellants and that he had signed the final bill only because he was under a grave financial crises and he was in desperate need of money. The learned counsel submits that the cause of

action as stated in the application is not that the respondent was made to sign the no claim certificate under coercion, but that the cause of action had arisen because no Arbitrator was appointed. The learned counsel also urges that the request for arbitration and of the arbitration clause was an afterthought. The correspondence between the parties also does not disclose that the no claim certificate was signed by the respondent under any coercion, except a letter dated 31st January, 1991, where the arbitration clause was invoked. In this letter the respondent, for the first time stated that the final amount had been accepted by him under protest. The learned counsel then submits that once the final amount had been accepted, there was no question of referring any dispute for arbitration as the agreement signed between the parties made it clear that no disputes would be entertained after settling the final bill. He submits that in view of the judgments in the cases of **M/s. P. K. Ramaiah and Co. vs. Chairman & Managing Director, National Thermal Power Corp.**, reported in 1994 Supp (3) SCC 126, **Union of India vs. M/s. Ajit Mehta and Associates, Pune & Ors.**, reported in AIR 1990 Bom.45 and **Punjab State Electricity Board vs. Bassi Cold Storage**, 1994 Supp (2) SCC 124, the trial Court could not have exercised any jurisdiction in the matter and should not have appointed an Arbitrator as there was no arbitral dispute pending between the parties.

4. Shri Bhobe, for the respondent, submits that

when the respondent had raised a plea of coercion, it was necessary for either the trial Court or the Arbitrator to decide whether in fact there was any coercion due to which the respondent had signed the no claim certificate. He relies on the judgment in the case of **K. Ramchandra Rao (dead) by LRs. vs. Union of India & Anr.**, to submit that there must be a finding of fact by either the trial Court or the Arbitral Tribunal to decide the question of coercion. He submits that under the Arbitration Act, 1940, the question whether the dispute referred is an arbitral dispute can be decided by the Arbitrator. He urges that no prejudice would be caused to the appellants if the Arbitrator decides whether there is a dispute which is arbitral.

5. Under Clause 70 of the Agreement signed between the parties all disputes between the parties to the contract could be referred to the Sole Arbitration of an Engineer Officer to be appointed by the authority mentioned in the tender documents. Under this Clause both parties were expected to agree to an arbitration in writing and it was made clear that no arbitration would take place after the completion of the works or termination or determination of the contract under condition nos.55, 56 and 57. Under Clause 65 the final bill was expected to be submitted by the contractor accompanied by abstracts, vouchers, etc. supporting it. No further claims could be made by the Contractor after submission of the final bill and any such

claims made would be deemed to have been waived and extinguished once the final bill was submitted.

In the present case there is no dispute that alongwith the final bill a no claim certificate was also signed by the respondent on 12th January, 1989. Whether the respondent can still invoke the arbitration clause once the no claim certificate had been issued by him is the question which is required to be decided. Could the respondent invoke the arbitration clause merely on the basis of a stray sentence in the letter invoking the arbitration stating that the final bill was accepted by him under protest?

6. There is no doubt that it was only on 31st January, 1991, i.e. two years after the no claim certificate was signed, that the respondent claimed that the no claim certificate was signed by him under protest. This case of signing under protest is then improved upon by the respondent in his application filed before the trial Court under Section 20 of the Act. In the application, the respondent states that it was due to coercion that he signed the final bill and no claim certificate. The coercion was due to circumstances in which he found himself at that point of time. The respondent was under a financial crises and in desparate need of money and, therefore, he was coerced into signing the final bill. There is no allegation made in the application that any of the appellants or any officer of the first

appellant coerced the respondent into accepting or signing the final bill or no claim certificate. The coercion which has been pleaded by the respondent is due to circumstances and financial constraints which forced him to accept the amount and sign the final bill.

7. In my view such a circumstance could not lead to the conclusion that an arbitral dispute exists. The respondent has, for the first time, thought it fit to urge the plea of coercion only two years after the no claim certificate was submitted by him. Obviously, therefore, this is an afterthought and cannot be countenanced. The respondent has made a request on 31st January, 1991, for invoking the arbitration clause. Even in that letter, there was not even a whisper of coercion. In any event, assuming the Respondent had submitted the no claim bill because of financial constraints that would not lead one to the conclusion that the arbitration clause can be invoked. Once the final bill had been submitted in accordance with Clause 65 of the Agreement, no further claims could be made by the Contractor. Therefore, in my view, there is no arbitral dispute and the order of the trial Court directing that the dispute be referred for arbitration must be set aside.

8. In the case of **Union of India vs. M/s Ajit Mehta And Associates, Pune & Ors.**, (supra), this Court was considering whether an arbitration clause in a contract can

be invoked when there was full and final settlement of the claim. In fact, the clauses in the contract which this Court was considering were the same as the clauses in the contract before me. This Court came to the conclusion that inspite of full and final settlement of the claim the arbitration clause in a contract may subsist where a party invoking it alleges that there was no accord and satisfaction for some reasons. However, this Court came to the conclusion that where the arbitration clause was invoked simpliciter and there was no allegation of coercion, mistake, misrepresentation, etc., it would have to be held that the contract itself had come to an end and with it the arbitration clause, which was a part and parcel of it. There is no doubt that in the present case the full and final settlement of the claim was made without any reservation. It was in January, 1991 that the respondent for the first time raised the contention while invoking the arbitration clause, that the final bill was submitted and the no claim certificate was given under protest. Obviously this is an afterthought.

9. In the case of **M/s. P. K. Ramaiah & Co. vs. Chairman & Managing Director, National Thermal Power Corpn.** (supra), the Apex Court held that where, admittedly, the full and final satisfaction was acknowledged by a receipt in writing and the amount was received unconditionally, a subsequent allegation of coercion is an afterthought and a device to get over the settlement of the dispute, acceptance

of the payment and receipt voluntarily given. Admittedly, in this case the respondent had acknowledged in writing, the amounts and had settled the bills finally and received the amount. Therefore, there is no question of any arbitral dispute arising for reference.

10. The reliance placed by Shri Bhobe on the case of **K. Ramachandra Rao (dead) by L.Rs. vs. Union of India & Anr.**, (supra) is misplaced. That entire decision is based on the facts of that case. The Apex Court held that whether or not there was undue influence would have to be decided by the Arbitrator only if such a dispute could be referred to arbitration and it was an arbitral dispute.

11. In the present case, the dispute raised by the respondent is clearly an afterthought and, therefore, the request made for arbitration cannot be accepted. As stated above, the only reason for raising the plea of coercion was that the respondent at the time of settling the final bill was in dire financial straits. This, in my view, cannot lead to the conclusion that the respondent had been coerced into accepting and signing the no claim certificate. Therefore, there was no arbitral dispute. If there is no arbitral dispute there was no question of making reference for arbitration.

12. The Appeal is allowed and the Judgment and order of the trial Court is set aside. No order as to costs.

SMT. NISHITA MHATRE, J.

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